

**Notice of Allowability**

Application No.

10/070,386

Applicant(s)

WATANABE ET AL.

Examiner

Terry A. McKelvey

Art Unit

1636

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the reply filed 12/6/04.
2. ☒ The allowed claim(s) is/are 1,4,5,11 and 13-22.
3. ☒ The drawings filed on 06 March 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>3/4/05</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                  |
|   | 9. <input type="checkbox"/> Other _____  |

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**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jay Williams on 3/4/05.

The application has been amended as follows:

(as per the attached pages of the faxed amendment of  
3/4/05)

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**AMENDMENTS TO THE CLAIMS:**

1. (Currently amended) An isolated promoter comprising a nucleotide sequence or a fragment thereof having promoter activity, which nucleotide sequence is selected from the group consisting of the following sequences, and a fragment thereof having promoter activity:

- (a) the nucleotide sequence of SEQ ID NO: 1,
- (b) a nucleotide sequence that has at least 95% homology to the sequence of SEQ ID NO: 1 and has promoter activity, and
- (c) a nucleotide sequence that hybridizes with the nucleotide sequence of SEQ ID NO: 1 under stringent conditions and has promoter activity, wherein the stringent conditions comprise a wash at 60°C for 15 minutes in a solution of 0.5 x SSC concentration and 0.1% SDS.

2-3. (Canceled)

4. (Previously presented) The isolated promoter according to claim 1, which functions in a filamentous fungus that belongs to Agonomycetes.

5. (Previously presented) The isolated promoter according to claim 1, wherein the length of the fragment having promoter activity is at least 600 bp.

6-10. (Canceled)

11. (Previously presented) An isolated expression vector comprising the promoter or the fragment thereof according to claim 1.

12. (Canceled)

13. (Currently amended) An isolated expression vector comprising a promoter comprising a nucleotide sequence or a fragment thereof having promoter activity, which nucleotide sequence

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is selected from the group consisting of the following sequences, and a fragment thereof having promoter activity:

- (a) the ~~a~~ nucleotide sequence of SEQ ID NO: 1,
- (b) a nucleotide sequence that has at least 95% homology to the sequence of SEQ ID NO: 1 and has promoter activity, and
- (c) a nucleotide sequence that hybridizes with the nucleotide sequence of SEQ ID NO: 1 under stringent conditions and has promoter activity, wherein the stringent conditions comprise a wash at 60°C for 15 minutes in a solution of 0.5 x SSC concentration and 0.1% SDS, together with a terminator comprising a nucleotide sequence or a fragment thereof having terminator activity, which nucleotide sequence is selected from the group consisting of the following sequences, and a fragment thereof having terminator activity:
  - (i) the ~~a~~ nucleotide sequence of SEQ ID NO: 2,
  - (ii) a nucleotide sequence that has at least 95% homology to the nucleotide sequence of SEQ ID NO: 2 and has terminator activity, and
  - (iii) a nucleotide sequence that hybridizes with the nucleotide sequence of SEQ ID NO: 2 under stringent conditions and has terminator activity, wherein the stringent conditions comprise a wash at 60°C for 15 minutes in a solution of 0.5 x SSC concentration and 0.1% SDS.

**14. (Previously presented)** The isolated expression vector according to claim 13, wherein the expression vector is pABPd.

**15. (Previously presented)** The isolated expression vector according to claim 11, which further comprises a nucleotide sequence encoding a protein of interest, wherein the nucleotide sequence is operably linked to the promoter and/or the terminator.

**16. (Currently amended)** A host cell transformed with the expression vector of claim 15.

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17. (Currently amended) The host cell according to claim 16, wherein the host cell is Mycelia sterilia.

18. (Currently amended) A method for producing a protein of interest, which comprises culturing the host cell of claim 16 and collecting the protein of interest from the culture medium.

19. (Previously presented) The expression vector according to claim 13, which further comprises a nucleotide sequence encoding a protein of interest, wherein the nucleotide sequence is operably linked to the promoter and/or the terminator.

20. (Currently amended) A host cell transformed with the expression vector of claim 19.

21. (Currently amended) The host cell according to claim 20, wherein the host cell is Mycelia sterilia.

22. (Currently amended) A method for producing a protein of interest, which comprises culturing the host cell of claim 20 and collecting the protein of interest from the culture medium.

**Conclusion**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Any inquiry concerning rejections or objections in this communication or earlier communications from the examiner should be directed to Terry A. McKelvey whose telephone number is (571) 272-0775. The examiner can normally be reached on Monday through Friday, except for Wednesdays, from about 7:30 AM to about 6:00 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to his office).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel can be reached at (571) 272-0781.



**Terry A. McKelvey, Ph.D.**  
**Primary Examiner**  
**Art Unit 1636**

March 7, 2005